

N.A.S.D. AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Roland Carlson and Rosemary Carlson

96-01033

Name of Respondents

Stratton Oakmont, Inc.;
Irving Stitsky;
Jordan Shamah

REPRESENTATION

For Claimants: Roland Carlson and Rosemary Carlson ("Carlson") were represented by Matthew D. Wayne, Esq. of Fishman & Merrick, P.C., located in Chicago, Illinois.

For Respondents: Stratton Oakmont, Inc. ("Stratton") and Irving Stitsky ("Stitsky") were originally represented by Jerry Santangelo, Esq. of Neal, Gerber & Eisenberg, located in Chicago, Illinois, until December 20, 1996. Thereafter, Stitsky did not appear at hearing, but was representing himself. Jordan Shamah did not appear at hearing, but was represented by Ross N. Herman, Esq. of Morvillo, Abramovitz, Grand, Iason & Silberberg, P.C., located in New York, New York.

CASE INFORMATION

Statement of Claim filed: March 8, 1996.

Claimant's Submission Agreement signed on: March 4, 1996.

Statement of Answer filed by Respondent Stratton and Stitsky on: May 10, 1996.

Respondent Stratton's Submission Agreement signed on: March 28, 1996.

Respondent Shamah's Submission Agreement signed on: March 28, 1996

Respondent Stitsky did not file an executed submission agreement.

Respondent Shamah's Answer, Motion to Dismiss and Motion to Strike filed: April 24, 1996.

Claimants' Response to Shamah's Motion to Dismiss and to Strike filed: June 5, 1996.

Shamah's Reply to the Response filed: June 11, 1996.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: March 1, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondents Stitsky and Shamah, while employed by Respondent Stratton, engaged in unauthorized trading of, and misrepresentation of, stocks and warrants in a securities account opened by the Carlsons in September 1993. Based upon the allegations of the claim, the Carlsons asserted claims against Respondents for violation of the anti-fraud provisions of the federal and state securities laws; common law fraud; breach of fiduciary duty; misappropriation of funds and conversion of funds. In addition, Claimants alleged that Stratton failed to supervise the activities of Shamah and Stitsky.

Respondents Stratton and Stitsky denied the material allegations of the Statement of Claim, alleging that Claimants were aware of the risks of their trading in their non-discretionary account, directed all trades in the account and knowingly invested in the securities of small capitalization growth companies that were traded over-the-counter on NASDAQ. In addition, Respondents asserted several additional defenses, including that the claims should be barred by in pari delicto; assumption of risk; ratification; estoppel; and that Claimants' negligence and greed caused the damage.

Respondent Shamah denied the material allegations of the Statement of Claim, asserting that the Claimants were informed of and ratified every trade, the Carlsons' trade objectives were "growth/speculation", and that Claimants were aware of the risks involved in the trading recommended. In addition, Shamah asserted several affirmative defenses.

RELIEF REQUESTED

Claimants requested entry of an award for compensatory damages of \$112,549.00, plus punitive damages, attorneys' fees, costs, and the NASD filing fees.

Respondents requested dismissal of the entire claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Stitsky did not file an executed submission agreement, but is required to submit to

arbitration pursuant to Section 10301 of the Code of Arbitration Procedure.

By letter dated February 14, 1997, the Claimants were advised that all proceedings were stayed against Stratton Oakmont, Inc. because of the filing of bankruptcy and the Order entered by the court at the request of the Securities Investor Protection Corporation. By letter dated February 18, 1997, the Claimants advised that they would proceed against the remaining respondents.

The Panel reviewed Respondent Shamah's Motion to Strike and Dismiss and determined the Motions would be denied at that time, but considered with the evidence presented in the case. The panel hereby denies the Motions.

By letter received April 11, 1997, Respondent Stitsky requested that the hearing be reopened. After review of the Motion, the letters sent by Attorney Martin Unger on Stitsky's behalf, and all responses, the Panel determined that the Motion would be denied.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Jordan Shamah and Irving Stitsky are jointly and severally liable for and shall pay to the Claimants, Roland and Rosemary Carlson, the sum of \$116,821.00 in actual damages;
2. In addition, Respondents Jordan Shamah and Irving Stitsky are jointly and severally liable for and shall pay to the Claimants, Roland and Rosemary Carlson, the sum of \$233,642.00 as punitive damages. In deciding to award punitive damages, the Panel considered the arguments of the parties presented in the Motion to Strike and the response, as well as the arguments of counsel at the hearing, and determined that authority existed for an award of punitive damages to the Claimants;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Section 10319 and 10332(c) of the Code of Arbitration Procedure, Respondent Jordan

Shamah is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$750.00 as adjournment fees for the postponement granted February 7, 1997.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$750.00 per session = \$750.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 claim filing fee and refund the \$750.00 hearing session deposit previously paid by the Claimants, Roland and Rosemary Carlson. Respondents Jordan Shamah and Irving Stitsky are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$750.00.

Concurring Arbitrators' Signatures

Name

Date

/s/ Charles A. Brizzolara, Esq.

July 3, 1997

Charles A. Brizzolara, Esq.

Public Arbitrator

Chairperson

/s/ G. Gale Roberson, Jr., Esq.

July 15, 1997

G. Gale Roberson, Jr., Esq.

Public Arbitrator

/s/ Joseph D. Mathewson, Esq.

August 4, 1997

Joseph D. Mathewson, Esq.

Industry Arbitrator